

### **DETAILED ACTION**

1. This action is in response to Applicant's submission filed 6/5/08, responding to the 2/5/08 Office action which detailed the rejection of claims 1-3, 6-19, and 22-40. Claims 1, 16, 17, 23-27, 31, 37, 39, and 40 have been amended, and claims 22, 28, 29, and 38 have been canceled. Claims 1-3, 6-19, 23-27, 30-37, 39, and 40 remain pending in the application and have been fully considered by the examiner.

#### ***Response to Arguments/Amendments***

2. The terminal disclaimer filed 8/26/08 has obviated the double patenting rejection. Accordingly, the double patenting rejection is withdrawn.

3. Applicants' amendment of claim 31 has obviated the 35 U.S.C. § 101 rejection of claim 31. The rejection is withdrawn.

4. Applicants' arguments on pages 11-13 and 15-16 with respect to the 35 U.S.C. § 102 and 35 U.S.C. § 103(a) rejections of claims 1-3, 6-15, and 32-36, involving the *Lajoie* and *Doherty* references have been fully considered and are persuasive. The rejections of claims 1-3, 6-15, 37, 39, and 40 have been withdrawn.

5. Applicants' arguments on pages 14-16 with respect to the 35 U.S.C. § 102 and 35 U.S.C. § 103(a) rejections of claims 16-19, 23-27, 30, 21, 37, and 39-40 have been fully considered in light of the arguments addressed in the preceding paragraph, and are persuasive. The rejections of claims 16-19, 23-27, 30, 21, 37, and 39-40 have been withdrawn.

***Allowable Subject Matter***

6. Claims 1-3, 6-19, 23-27, 30-37, 39, and 40 are allowed.
7. The following is an examiner's statement of reasons for allowance:

As Applicants point out on pages 11-16 filed 6/5/08 the cited prior art taken alone or in combination fail to teach, in combination with the other claimed limitations, the features of independent claims 1, 16, 32, and 37.

Regarding independent claim 1, the cited prior art taken alone or in combination fail to teach, in combination with the other claimed limitations, the three-part process of: 1) receiving over the distributed network at the network attached computer, an instruction to begin a firmware recovery procedure, the instruction received while executing an operating system, the operating system being separate from the firmware; 2) in response to receiving the instruction, rebooting the network attached computer to an operating system independent operating environment; and 3) receiving a new firmware image in fragments over the distributed network in the operating system independent environment.

Regarding independent claim 16, the cited prior art taken alone or in combination fail to teach, in combination with the other claimed limitations, the three-part process of: 1) while the network attached computer is in an operating system independent state, sending a recovery request in response to determining that the current BIOS is invalid, the BIOS being separate from the operating system; 2) in response to sending the recovery request, receiving a new BIOS image over the distributed network; 3) in response to receiving the new BIOS image, updating the current BIOS with the new BIOS image.

Regarding independent claim 32, the cited prior art taken alone or in combination fail to teach, in combination with the other claimed limitations, a system of two computers, the second computer operative to: 1) in response to receiving the instruction, transition to an OS independent recovery state; 2) in response to transitioning to the recovery state, send the notification of readiness to the first computer over the network; 3) in response to sending the notification of readiness, receive the new firmware image; and 4) in response to receiving the new firmware image, update the current firmware with the new firmware image.

Regarding independent claim 37, the cited prior art taken alone or in combination fail to teach, in combination with the other claimed limitations, the second computer operative to: 1) in response to determining that the current BIOS is invalid, send the recovery request to the first computer over the network while the second computer is in the operating system independent recovery state; 2) in response to sending the recovery request, receive the new BIOS image; and 3) in response to receiving the new BIOS image, update the current BIOS with the new BIOS image.

The remaining claims 2, 3, 6-15, 17-19, 23-27, 30, 31, 33-36, 39, and 40 are each dependent upon one of the independent claims 1, 16, 32, or 37, and are considered allowable for at least the reasons mentioned above.

Any comments considered necessary by applicant must be submitted no later than the payment of the issue fee and, to avoid processing delays, should preferably accompany the issue fee. Such submissions should be clearly labeled "Comments on Statement of Reasons for Allowance."

***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to JAMES RUTTEN whose telephone number is (571)272-3703. The examiner can normally be reached on M-F 9:00-5:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Tuan Q. Dam can be reached on (571)272-3695. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/J. R./  
Examiner, Art Unit 2192

/Tuan Q. Dam/  
Supervisory Patent Examiner, Art Unit 2192